

Amendment No. 1 to HB2284

Coleman  
Signature of Sponsor

**AMEND Senate Bill No. 2297**

**House Bill No. 2284\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. The title of this act is, and may be cited as, the “Elderly and Disabled Adults Protection Act of 2009.”

SECTION 2. Tennessee Code Annotated, Section 68-11-1001, is amended by deleting subsections (a) and (b) in their entireties, and by substituting instead the following:

(a) The department of health shall establish and maintain a registry containing the names of any persons who have been determined by Tennessee government agencies or any state or federal court or any administrative bodies to have abused, neglected, or misappropriated or exploited the property of vulnerable individuals.

(b) The names and information contained in this registry shall be available for public inspection as provided by this chapter.

SECTION 3. Tennessee Code Annotated, Section 68-11-1004(a) is amended by adding the following language as a new, appropriately designated definition:

( ) “Direct health care” means any physical or behavioral procedure or treatment requiring direct contact that is needed to diagnose, evaluate or treat an individual's physical or mental condition, including preventive care; and, as it relates to long-term care, personal or medical care that is needed to assist with activities of daily living, whether provided in an institution, a community-based residential alternative to institutional care, other community based setting, or the person's home.

SECTION 4. Tennessee Code Annotated, Section 68-11-1004(a) is amended by adding the following language as a new, appropriately designated definition:

( ) “Direct health care-related services” means any duties or services in which an employee, contractor or unsupervised volunteer, as part of their responsibilities or contractual obligations, has regular access to occupied rooms or occupied partitioned areas where an individual receives direct health care services. For purposes of this definition, “regular access” means the reasonably expected requirement, as part of the individual’s employment, contract, or unsupervised volunteer assignment, to access occupied rooms or occupied partitioned areas for more than eighty (80) hours in any one (1) calendar year where an individual receives direct health care services. For purposes of this definition, an unsupervised volunteer shall only mean a volunteer that provides or assists with direct health care.

SECTION 5. Tennessee Code Annotated, Section 68-11-1004(a) is amended by adding the following language as new, appropriately designated definitions:

( ) “Misappropriation” means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or which constitute a violation of a fiduciary duty of a caretaker of a vulnerable person, except as otherwise defined by a state agency or other investigative authority with responsibility to investigate such acts pursuant to any other provision of law or regulation;

( ) “Exploitation” means, in cases that are investigated by the department of human services, the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult; and in any other circumstance means act of improperly utilizing either property or funds of a vulnerable person in a manner that is deemed to be unjust or cruel.

SECTION 6. Tennessee Code Annotated, Section 68-11-1004(a) is amended by adding the following language as a new, appropriately designated definition:

( ) “Property” means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry established by this part, property shall only consist of funds paid by a governmental agency to an “adult” as defined in Section 71-6-102, if the report of abuse, neglect, misappropriation or exploitation is investigated by the department of human services pursuant to Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.

SECTION 7. Tennessee Code Annotated, Section 68-11-1004(a)(2) is amended by deleting the subdivision in its entirety and substituting instead the following language:

( ) “Offense against a vulnerable person” means any act that constitutes abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person even if such act does not constitute a criminal act, or any crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.

SECTION 8. Tennessee Code Annotated, Section 68-11-1004(a)(3) is amended by deleting the subdivision in its entirety and substituting instead the following language:

( ) “Vulnerable person” means anyone who:

(A) Is under eighteen (18) years of age; or

(B) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is at risk of, or has been determined to have suffered from abuse, neglect, or misappropriation or exploitation of property, and is, or has been:

(i) The subject of any report of harm, abuse, neglect, or misappropriation or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to title 37, chapter 1, parts 1 or 6, title 71, chapter 6, part 1, or pursuant to any other provision of law or regulation; or

(ii) Receiving protective services from a state agency pursuant to law; or

(iii) The victim of any criminal offense that constitutes abuse, neglect or misappropriation or exploitation of property; or

(iv) In the care of either a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or

(v) Receiving direct health care or direct health care-related services:

(a) From any agency licensed or regulated by a state agency; or

(b) From any agency contracted with:

(1) A state agency; or

(2) Another entity that is contracted with a state agency; or

(c) Provided through state or federal funds.

SECTION 9. Tennessee Code Annotated, Section 68-11-1004(b)(1) is amended by deleting the subdivision in its entirety and substituting instead the following language:

(b)

(1) Any state government agency that finds that an individual has committed abuse, neglect, or misappropriation or exploitation of the

property of a vulnerable person shall, subject to completion of due process, immediately notify the department of health concerning such individual in accordance with subdivision (b)(2). The department of health shall include the name of an individual on the registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, pursuant to that agency's procedures and definitions, to have committed abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.

SECTION 10. Tennessee Code Annotated, Section 68-11-1004(b) is amended by deleting subdivision (3) of subsection (b) in its entirety and by substituting instead the following:

(3) Notification shall include the individual's last known mailing address, and the agency's definition of abuse, neglect, or misappropriation or exploitation of property that it used in making the determination, and any other information that the department determines is necessary to adequately identify such individual for purposes of administrative hearings provided by this part, or to adequately identify such individual when inquiry to the registry is made.

SECTION 11. Tennessee Code Annotated, Section 68-11-1004, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Upon receiving the notification set out in subsection (b) or (c), the department shall, in addition to entering the individual's name on the registry, also maintain and make available upon request, the name of the reporting agency and the applicable definition of abuse, neglect, or misappropriation or exploitation of property supplied by that agency. The individual's name, once entered on the registry, shall remain on the registry, except as provided in subsection (g), even if the individual meets the requirements of any criminal disposition, and regardless of any expunction that may be ordered by any court or that may take place by operation of law in connection with such criminal

disposition; provided, however, that any expunction reported to the department shall result in the removal from the registry of everything regarding the criminal disposition, except the individual's name, and the department shall destroy any other documentation of the criminal disposition; provided, further, however, that if a person is reported by any state agency pursuant to the provisions of this part, the identification of such individual as a perpetrator of abuse, neglect, misappropriation or exploitation of a vulnerable person shall not be subject to removal based upon expunction of a criminal disposition.

SECTION 12. Tennessee Code Annotated, Section 68-11-1004(e), is amended by adding the language, "or any fact issue related to the correct identity of such individual" immediately following the language "hearing conclusions were made" in the second sentence.

SECTION 13. Tennessee Code Annotated, Section 68-11-1004(h), is amended by adding the following new subsection (h):

(h) A state agency that has placed a person in the registry pursuant to this part may recommend to the department the removal of such person's name if:

(1) It finds that the placement of the person's name on the registry was in error; or

(2)

(A) An advisory group convened by the state agency composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education, the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the registry determines, based upon evidence presented to such group, that removal of the person from the registry is clearly

warranted, then such group may recommend in writing to the agency a waiver and removal of such person from the registry.

(B) The final decision regarding the recommendation for removal from the registry shall be made by the state agency and the recommendation shall be reduced to writing, giving the agency's reasons for such decision, and sent to the person seeking the waiver.

(C) If the decision is to remove the person from the registry, the recommendation shall be sent to the department and such person's name shall be removed by the department.

(D) If the person seeking a waiver is dissatisfied with the determination made by the state agency, the person shall be permitted to appeal the determination. The appeal shall be conducted as a contested case hearing pursuant to the Uniform Administrative Procedures Act compiled in §§ 4-5-301 et seq.

SECTION 14. Tennessee Code Annotated, Section 68-11-1006, is amended by deleting the section in its entirety and substituting instead the following language:

68-11-1006.

(a) Any:

(1) State agency under title 33, 37, 68 or 71 ;

(2) Entity or person licensed by a state agency as defined in subdivision (a)(1); or

(3) Entity or person under the provisions of a contract between that entity and a state agency or an entity under the provisions of a contract with another entity that has a contract with a state agency; that has a vulnerable person in its care or provides direct health care or direct health care related-services shall, before hiring as an employee or contracting with any person who will provide direct health care or direct health care-related

services to an individual who is in the care of or receiving direct health care or direct health care-related services from the state agency or entity, determine whether the prospective employee or contractor is listed on the registry.

(b) Each state agency, entity, person or contractor, shall document in its personnel files, or create a separate registry file, which documents that it has complied with subsection (a) for each person that the state agency, entity, or contractor hires as an employee, or uses as a volunteer, who will provide direct health care or direct health care-related services to an individual who is in the care of or receiving direct health care or direct health care-related services from the state agency, entity or contractor.

(c) No person who is listed on the registry may be hired or otherwise permitted to provide direct health care or direct health care-related services to an individual who is in the care of or receiving direct health care or direct health care-related services from the state agency, or entity or person as defined in subdivisions (a)(1) - (a)(3).

(d) Each state agency, as defined in subdivision (a)(1), shall monitor during currently required inspections or visits to determine whether entities, as defined in subdivisions (a)(2) or (a)(3), that it licenses or contracts are complying with the requirements in subsections (a)-(c).

(e) If a state agency, as defined in subdivision (a)(1), determines that an entity, as defined in subdivisions (a)(2) or (a)(3), that it licenses or contracts with, has failed to comply with the requirements in subsections (a)-(c), the state agency may assess a civil penalty against such entity for each violation in an amount ranging from two hundred fifty dollars (\$250) for an initial violation up to a maximum of two thousand five hundred dollars (\$2500) for repeat violations. In no event will an entity be required to pay more than one civil penalty for a single violation.



(f) Any state agency, as defined in subdivision (a)(1), may terminate or not enter or renew a contract with an entity, as defined in subdivision (a)(2) and (a)(3), that fails to comply with subsections (a), (b) or (c).

(g) Any state agency, as defined in subdivision (a)(1), shall terminate for the good of the service an employee whose job functions include providing direct health care or direct health care-related services and whose name is on the registry under this part.

SECTION 15. Tennessee Code Annotated, Section 68-11-1008 is amended by deleting the section in its entirety and substituting instead the following language:

68-11-1008.

(a) Anyone who submits an allegation of abuse, neglect, or misappropriation or exploitation of property to the department for inclusion in the registry, or who testifies in any administrative or judicial proceeding arising from the allegation, shall be immune from any civil or criminal liability for making the report or for testifying, except for liability for perjury, unless the person acted in bad faith or with malicious purpose.

(b) A licensing authority that refuses to license a person listed on the registry established by this part, or that refuses to license an entity that employs or allows such a person to provide direct health care or direct health care-related services to an individual who is in the care of or receiving direct health care or direct health care-related services from the entity, or a state agency that terminates or does not enter into or renew a contract with a person listed on the registry or an entity that employs or otherwise utilizes such a person, or a person or entity that declines to employ or otherwise utilize such a person, or that terminates the employment of such a person, shall be absolutely immune from suit by or on behalf of that person and from any liability for such actions based upon the person's listing on the registry.

SECTION 16. Tennessee Code Annotated, Title 68, Chapter 11, Part 10, is amended by adding the following language as a new, appropriately designated section:

68-11-10\_\_.

(a) The department shall inform other state agencies regarding the requirements set forth in Section 68-11-1004(b) and Section 68-11-1006.

(b) The department shall submit an annual report to the select oversight committee on long-term care regarding any general information, not deemed confidential by any law, on finding reported to the department and included in the registry, including the number of incidents by: type of abuse, neglect, misappropriation or exploitation of property.

SECTION 17. Tennessee Code Annotated, Section 33-2-1201, is deleted in its entirety and substituted instead with the following language:

33-2-1201.

(a) To help the department determine the suitability of a person for employment, or volunteer services and verify the accuracy of information submitted in support of an application to work for the department, the department shall conduct a background check before any person who applies to work for the department as an employee or volunteer, or any volunteer who provides direct health care or direct health care-related services as defined under this part, or have or direct responsibility for, persons with mental illness, serious emotional disturbance, a developmental disability, or a substance abuse disorder. For purposes of this section, "direct health care" and "direct health care-related services" shall have the same meaning as these terms are defined in § 68-11-1004(a).

(b) A background check shall include the following:

(1) The supply of a fingerprint sample for the conduct of a criminal background investigation by the Tennessee bureau of investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to

the federal bureau of investigation for a national criminal history record check.

(2) Verification that the person's name does not appear on the abuse registry maintained by the department of health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(c) The department shall document in its personnel files, or in a separate background check file, that it has completed the background checks required by this section.

(d) Any person who applies for employment with, or volunteers with the department and will provide direct health care or direct health care-related services for a person with mental illness, serious emotional disturbance, or developmental disabilities shall:

(1) Provide past work history, work references, and personal references;

(2) Agree to the release and use of any and all information and other records about the person from any source necessary for the purpose of verifying whether the person has been charged with or convicted of a felony criminal offense, or who has been subject to any employment disciplinary action; and

(3)

(A) Submit to a background check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; or

(B) Release any information required for the criminal background investigation by a professional background screening organization or criminal background check service or registry.

(e) The department shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment or volunteer status except as required or permitted by state or federal law.

(f) The department shall pay the costs for conducting any background checks required by this section.

(g) The following shall disqualify a person from being an employee or volunteer that provides direct health care or direct health care-related services to a person with mental illness, serious emotional disturbance, or developmental disabilities:

(1) Conviction of any criminal felony offense, or the pleading of *nolo contendere* to any criminal felony offense;

(2) Conviction of, or the pleading of *nolo contendere* to, any offenses not delineated in subsection (g)(1) relating to theft or the misappropriation or exploitation of property, or the physical or sexual abuse, intimidation, harassment, stalking or neglect of a person.

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license, if applicable;

or

(6) The refusal to cooperate with a background check.

(h) A person with any of the disqualifiers in subdivisions (g) (1)–(4) may, at the discretion of the department, serve as an employee or volunteer, unless any of the following apply:

(1) The conviction or pleading of *nolo contendere* is an intentional or knowing criminal felony offense against a person or property;

(2) The offense is related to the physical, sexual, or emotional abuse or theft or misappropriation of the property of a vulnerable person as defined in § 68-11-1004;

(3) The person is listed on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The person is listed on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Any offense as delineated in subdivision (g)(1) or (2) occurred within the past three years; or

(6) More than one offense as delineated in subdivision (g)(1) or (2) occurred within the past seven (7) years.

(i) Except as provided in section (h), if a person has any of the disqualifiers listed in subsection (g), the department shall terminate the employment of, or not allow such person to be a volunteer if the person provides direct health care or direct health care-related services to a person with mental illness, serious emotional disturbance, or developmental disabilities.

(j) If the department declines to employ or terminates a person based upon background check information provided to the department under this section, the department shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

SECTION 18. Tennessee Code Annotated, Section 33-2-1202, is deleted in its entirety and substituted instead with the following language:

33-2-1202.

(a) As used in this section and § 38-6-109, “organization” means a facility or service licensed under chapter 2, part 4 of this title or an entity contracting with a facility or service licensed under chapter 2, part 4 of this title.

(b) The department may promulgate rules and regulations necessary for ensuring that organizations comply with the requirements of this section.

(c) Each organization shall conduct a criminal background check on an employee or person with which it contracts before permitting any employee or person to provide direct health care or direct health care-related services to a service recipient and any person who applies to volunteer with an organization and who will have unsupervised access to a service recipient. The organization shall inform the employee or person that it will conduct a background check. For purposes of this section, “direct health care” and “direct health care-related services” shall have the same meaning as these terms are defined in § 68-11-1004(a).

(d)

(1) Notwithstanding any other provision of the law to the contrary, any licensed or certified individual that has undergone a background check as required in §63-1-116(b) as part of the licensure or certification process shall not be required to undergo a background check.

(2) An organization or an entity with which an organization contracts shall only be required to comply with subdivisions (f)(2) - (4) for any employee, contractor or unsupervised volunteer who has performed direct health care or direct health care-related services for said entities prior to this act becoming law. Said entities shall have six (6) months from the date of this act becoming law to comply with this subdivision.

(3) An organization, or entity with which an organization contracts, shall be required to perform a full background check for any new

employee, contractor or unsupervised volunteer that was previously employed, contracting or volunteering for a different regulated entity and not required to submit to the criminal portion of the background check as required in subdivision (f)(1).

(A) An individual may request a copy of their background check file from the an organization for the purpose of moving to a new position with another regulated entity if the background check information conforms to the requirements of subsection (f) and was performed within two (2) years from the date of hire.

(B) The hiring organization may accept the background check file as proof of compliance with subsections (c) after written verification of the authenticity of the background check file is received from the previous employing organization or regulated health care provider. The hiring entity is not required to accept the background check file as verification and may require the new employee, contractor or unsupervised volunteer to submit to another background check.

(e) Any student, person completing an internship, or person assigned to an organization through an educational institution or training facility for the purpose of performing direct health care or direct health care-related services shall be required to submit to a background check as specified in subsection (f). The educational or training facility may require the student, intern, or person assigned to the regulated entity to pay for the costs of the background check. The educational or training facility shall maintain a confidential background check file for all students, interns, or persons assigned to regulated entities for the purpose of providing direct health care or direct health care-related services.

(f) A background check shall include the following:

(1)

(A) A criminal background investigation by the Tennessee bureau of investigation and/or the federal bureau of investigations; or

(B) A criminal background investigation by a professional background screening organization or criminal background check service or registry;

(2) Verification that the person's name does not appear on the abuse registry maintained by the department of health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(g) Any person who applies for employment with, to be a contractor for, or to be an unsupervised volunteer and who will provide direct health care or direct health care-related services to a service recipient shall:

(1) Provide past work history for the previous five (5) years with references for each position;

(2) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant or person for at least five (5) years;

(3) Agree to the release and use of any information necessary for the purpose of verifying whether the person has been convicted of a criminal offense, or who has been subject to any employment disciplinary action, to either the organization or its agent; and

(4)



(A) Submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; or

(B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(h) The organization shall check past work and personal references prior to hiring as an employee, contracting with, or using a person as a volunteer.

(i) Each organization shall document in its personnel files, or in a separate confidential background check file, that it has completed the background checks required by this section.

(j) An organization shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(k) The organization may pay the costs for conducting any background check required by this section. Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or volunteer from paying such costs to the organization.

(l) Except as provided in subsection (m), any of the following shall disqualify a person from being an employee or contractor of an organization to provide direct health care or direct health care-related services to a service recipient, or from being a volunteer who has unsupervised access to a service recipient:

(1) Conviction of any criminal felony offense, or the pleading of *nolo contendere* to any criminal felony offense;

(2) Conviction of, or the pleading of *nolo contendere* to, any offenses not delineated in subsection (l)(1) relating to theft or the misappropriation or exploitation of property, or the physical or sexual abuse, intimidation, harassment, stalking or neglect of a person.

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license, if applicable; or

(6) The refusal to cooperate with a background check.

(m) If a person has any of the disqualifiers listed in subdivisions (l)(1)–(4), the person may, at the discretion of the organization, serve as an employee, contractor, or volunteer, unless any of the following apply:

(1) The conviction or pleading of *nolo contendere* is an intentional or knowing criminal felony offense against a person or property;

(2) The offense is related to the physical, sexual, or emotional abuse or theft or misappropriation of the property of a vulnerable person as defined in § 68-11-1004;

(3) The person is listed on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The person is listed on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Any offense as delineated in subdivision (l)(1) or (2) occurred within the past three years; or

(6) More than one offense as delineated in subdivision (l)(1) or (2) occurred within the past seven (7) years.

(n) Except as provided in subsection (m), if a person has any of the disqualifiers listed in subsection (l), the organization shall terminate the employment of or terminate the contract with such person if the person provides direct health care or direct health care-related services, to a service recipient.

(o) An organization that declines to employ or terminates a person based upon background check information provided to the organization under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(p) Any organization that fails to complete background checks or otherwise comply with the requirements of this section may be subject to a civil monetary penalty pursuant to §§ 33-2-409 and 33-2-410.

(q) The department may refuse to grant, or may restrict, suspend, revoke, or refuse to renew any license if the organization fails to comply with the requirements of this section and the department shall be immune from suit by or on behalf of that organization for the refusal to grant a license or the decision to restrict, suspend, revoke or renew a license.

SECTION 19. Tennessee Code Annotated, Section 63-1-116, is deleted in its entirety and substituted instead with the following language:

63-1-116.

(a) Each board, council, committee or other governmental entity created pursuant to title 63 or title 68 that is attached to the department is authorized to promulgate all rules and regulations necessary for obtaining criminal background information from applicants, professionals and facilities regulated by that board, council, committee, or other governmental entity (herein after referred to as “regulated entity”), and ensuring that regulated entities comply with the requirements of this section.

(b) Each board, council, committee, or other governmental entity shall ensure that, at a minimum, a background check, as specified in subsection (i), is conducted on any new applicant prior to the issuance of any licenses, certificates, registrations or other authorizations required to practice any of the health related professions regulated by that board, council, committee or other governmental entity.

(c) Each regulated entity shall conduct a background check, as specified in subsection (i), before permitting an employee, an individual with whom the entity has contracted, or an unsupervised volunteer to provide either direct health care or direct health care-related services. Any regulated entity performing services under title 33 or title 71, chapter 2, shall conduct the required background check on an employee, contractor or unsupervised volunteer under the requirements of said titles.

(d) Each regulated entity shall require any entity with which it contracts for direct health care or direct health care-related services to conduct a background check, as specified in subsection (i), before permitting an employee, an individual with whom they have contracted, or a volunteer to provide direct health care or direct health care-related services.

(e) For purposes of this section, “direct health care” means any physical or behavioral procedure or treatment requiring direct contact that is needed to diagnose, evaluate or treat an individual's physical or mental condition, including preventive care; and, as it relates to long-term care, personal or medical care that is needed to assist with activities of daily living, whether provided in an institution, a community-based residential alternative to institutional care, other community based setting, or the person’s home.

(f) For purposes of this section, “direct health care-related services” means any duties or services in which an employee, contractor or unsupervised volunteer, as part of their responsibilities or contractual obligations, has regular

access to occupied rooms or occupied partitioned areas where an individual receives direct health care services. For purposes of this definition, “regular access” means the reasonably expected requirement, as part of the individual’s employment, contract, or unsupervised volunteer assignment, to access occupied rooms or occupied partitioned areas for more than eighty (80) hours in any one (1) calendar year where an individual receives direct health care services. For purposes of this definition, an unsupervised volunteer shall only mean a volunteer that provides or assists with direct health care.

(g)

(1) Notwithstanding any other provision of the law to the contrary, any licensed or certified individual that has undergone a background check as required in subsection (b) as part of a separate licensure or certification process shall not be required to undergo a background check as specified in this section. Nothing in this subsection shall be construed as prohibiting a regulated entity from requiring a licensed or certified individual from submitting to a background check as the regulated entity deems necessary for employment, contracting or volunteer services.

(2) A regulated entity or an entity with which a regulated entity contracts shall only be required to comply with subdivisions (i)(2)-(4) for any current employee, contractor or unsupervised volunteer who has performed direct health care or direct health care-related services for said entities prior to this act becoming law. The regulated entity shall have six (6) months from the date of this act becoming law to comply with this subdivision.

(3) A regulated entity, or entity with which a regulated entity contracts, shall be required to perform a full background check as specified in subsection (i) for any new employee, contractor or unsupervised volunteer that was previously employed, contracting or

volunteering for a different regulated entity and not required to submit to the criminal portion of the background check pursuant to subsection (g)(2).

(A) An individual may request a copy of their background check file from the regulated entity for the purpose of moving to a new position with another regulated entity if the background check information conforms to the requirements of subsection (i) and was performed within two (2) years from the date of hire.

(B) The hiring regulated entity may accept the background check file as proof of compliance with subsections (c) or (d) after written verification of the authenticity of the background check file is received from the previous employing regulated entity. The hiring regulated entity is not required to accept the background check file as verification and may require the new employee, contractor or unsupervised volunteer to submit to another background check.

(h) Any student, person completing an internship, or person assigned to a regulated entity through an educational institution or training facility for the purpose of performing direct health care or direct health care-related services shall be required to submit to a background check as specified in subsection (i). The educational or training facility may require the student, intern, or person assigned to the regulated entity to pay for the costs of the background check. The educational or training facility shall maintain a confidential background check file for all students, interns, or persons assigned to regulated entities for the purpose of providing direct health care or direct health care-related services.

(i) A background check shall include the following:

(1) A criminal background check by the Tennessee bureau of investigation or a professional background screening organization.

(2) Verification that the person's name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(j) Any person who will provide direct health care or direct health care-related services shall:

(1) Provide past work history, work references for the previous five (5) years, and (3) personal references;

(2) Agree to the release and use by the regulated entity any and all information necessary to determine or verify whether the person has been convicted of a criminal offense or subject to any previous employments actions relating to the performance of direct health care or direct health care-related services.

(3) Release any information required for a criminal background investigation.

(k) Each regulated entity or entity with which a regulated entity contracts shall document in its personnel files, or in a separate confidential background check file, that it has completed the background checks required by this section.

(l) A regulated entity shall not disclose criminal background check information to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(m) The regulated entity or the employee, contractor or unsupervised volunteer may pay the costs for conducting any background check required by this section.

(n) Except as provided in subsection (o), any of the following shall disqualify a person from providing direct health care or direct health care-related services:

(1) Conviction of any criminal felony offense, or the pleading of *nolo contendere* to any criminal felony offense;

(2) Conviction of, or the pleading of *nolo contendere* to, any offenses not delineated in subdivision (n)(1) relating to theft or the misappropriation or exploitation of property, or the physical or sexual abuse, intimidation, harassment, stalking or neglect of a person.

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the individual to have the required license, if applicable; or

(6) The refusal to cooperate with a background check.

(o) If an individual has any of the disqualifiers listed in subdivisions (n)(1) - (4), the individual may, at the discretion of the applicable board, council, committee, governmental entity or regulated entity, be authorized to provide direct health care or direct health care-related services, unless any of the following apply:

(1) The conviction or pleading of *nolo contendere* is an intentional or knowing criminal felony offense against a person or property;



(2) The offense is related to the physical, sexual, or emotional abuse or theft or misappropriation of the property of a vulnerable person as defined in § 68-11-1004;

(3) The person is listed on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The person is listed on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Any offense as delineated in subdivision (n)(1) or (2) occurred within the past three years; or

(6) More than one offense as delineated in subdivision (n)(1) or (2) occurred within the past seven (7) years.

(p) Except as provided in subsection (o), if an individual has any of the disqualifications listed in subsection (n), a regulated entity or entity contracting with a regulated entity shall terminate the employment, contractor, or volunteer if the person provides direct health care or direct health care-related services.

(q) The department, board, council, or committee or other governmental entity shall, through established procedures, determine whether regulated entities are complying with the requirements of this section.

(r) A regulated entity that declines to employ or terminates a person based upon background information provided to the regulated entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(s) Any regulated entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from five hundred dollars (\$250) for an initial violation up to a maximum of two thousand five

hundred dollars (\$2,500) for repeat violations. In no event will a regulated entity be required to pay more than one civil penalty for a single violation.

(t) A board, council, or committee or other governmental entity may deny an application for, restrict, place conditions on, suspend, revoke, or refuse to renew a license or authorization to practice based on the information provided to it under this section or if the regulated entity fails to conduct background checks or otherwise fails to comply with the requirements of this section.

(u) Any board, council, or committee or other governmental entity that denies an application, restricts, places conditions on, suspends, revokes, or refuses to renew a license or authorization to practice based upon information provided to it under this section or non-compliance with this section shall be immune from suit by or on behalf of that regulated entity for the denial, restriction, condition, suspension, revocation, or refusal to renew.

(v) If necessary to effectuate the purposes of this act, any rules promulgated pursuant to this section may be promulgated as public necessity rules pursuant to § 4-5-209(a)(4).

SECTION 20. Tennessee Code Annotated, Section 68-11-256, is deleted in its entirety and substituted instead with the following language:

Each board, council, committee or other governmental entity created pursuant to title 68 that is attached to the department is authorized to promulgate all rules and regulations necessary for obtaining criminal background information from applicants, professionals and facilities regulated by that board, council, committee, or other governmental entity and ensuring that the applicants, professionals and facilities comply with the requirements of §63-1-116.

SECTION 21. Tennessee Code Annotated, Section 71-2-111, is deleted in its entirety and substituted instead with the following language:

71-2-111.

(a) As used in this section “employing entity” means any person or organization that is paid by the commission to provide direct health care or direct health care-related services. For purposes of this section, “direct health care” and “direct health care related-services” shall have the same meaning as these terms are defined in §68-11-1004(a).

(b) The commission shall require each employing entity to conduct a background check before hiring or contracting with an individual who will provide direct health care or direct health care-related services to an individual who is in the care of the employing entity or receiving direct health care or direct health care-related services from the employing entity.

(c) A background check shall include the following:

(1)

(A) A criminal background investigation by the Tennessee bureau of investigation and/or the federal bureau of investigations;  
or

(B) A criminal background investigation by a professional background screening organization or criminal background check service or registry;

(2) Verification that the person’s name does not appear on the abuse registry maintained by the Department of Health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person’s name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(d) Any individual, contractor or unsupervised volunteer who will provide direct health care or direct health care-related services to an individual who is in

the care of or receiving direct health care or direct health care-related services from the employing entity, shall consent to the following:

(1) Provide past work history and work references for the previous five (5) years, and at least three (3) personal references.

(2) Agree to the release and use of any information necessary to the employing entity for the purpose of verifying whether the person has been convicted of a criminal offense or has been subject to any employment disciplinary action.

(3)

(A) Submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation, or any other law enforcement agency; or

(B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(e) Each employing entity shall document in its personnel files, or in a separate confidential background check file, that it has completed the background checks required by this section.

(f) An employing entity shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(g) The employing entity shall pay the costs for conducting any background check required by this section, including any cost incurred by the Tennessee bureau of investigation, the federal bureau of investigation, the professional background screening organization, law enforcement agency, or other legally authorized entity. Payment of the costs to the Tennessee bureau of

investigation shall be made in accordance with §§ 38-6-103 and 38-6-109.

Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or unsupervised volunteer from paying such costs to the organization.

(h) Except as provided in subsection (i), any of the following shall disqualify a person from being an employee, contractor or unsupervised volunteer and providing direct health care or direct health care-related services to an individual who is receiving direct health care or direct health-care related services from the employing entity:

(1) Conviction of any criminal felony offense, or the pleading of *nolo contendere* to any criminal felony offense;

(2) Conviction of, or the pleading of *nolo contendere* to, any offenses not delineated in subdivision (h)(1) relating to theft or the misappropriation or exploitation of property, or the physical or sexual abuse, intimidation, harassment, stalking or neglect of a person.

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license, if applicable;  
or

(6) The refusal to cooperate with a background check.

(i) If a person has any of the disqualifiers listed in subdivisions (h)(1)-(4), the person may, at the discretion of the employing entity, serve as an employee, contractor or unsupervised volunteer, unless any of the following apply:

(1) The conviction or pleading of *nolo contendere* is an intentional or knowing criminal felony offense against a person or property;

(2) The offense is related to the physical, sexual, or emotional abuse or theft or misappropriation of the property of a vulnerable person as defined in § 68-11-1004;

(3) The person is listed on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The person is listed on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Any offense as delineated in subdivision (h)(1) or (2) occurred within the past three years; or

(6) More than one offense as delineated in subdivision (h)(1) or (2) occurred within the past seven (7) years.

(j) Except as provided in subsection (i), if a person has any of the disqualifiers listed in subsection (h), an employing agency shall terminate the employment of or terminate the contract with such person if the person provides direct health care or direct health care-related services to an individual.

(k) The commission shall monitor employing agencies through current review processes to determine whether employing entities are complying with the requirements of this section.

(l) An employing entity that declines to employ or terminates a person based upon background information provided to the employing entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(m) Any employing entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from two hundred fifty dollars (\$250) for an initial violation up to a maximum of two thousand five

hundred (\$2,500) for repeat violations. In no event will an employing entity be required to pay more than one civil penalty for a single violation.

(n) The commission or any other state agency may terminate or not enter or renew a contract with an employing entity that fails to comply with the requirements of this section.

SECTION 22. Tennessee Code Annotated, Section 71, Chapter 5, Part 1, is amended by adding a new appropriately designated section containing the following language:

71-5-\_\_.

(a) Any person or organization that provides direct health care or direct health care-related services funded by the bureau of TennCare and is not required to complete background checks for its employees, contractors and unsupervised volunteers under any of the background check requirements of titles 33, 63, 68 or 71, chapter 2, shall require its employees, contractors or unsupervised volunteers to submit to a background check pursuant to this section.

(b) As used in this section “employing entity” means any person or organization that is funded by the bureau of TennCare to provide direct health care or direct health care-related services. For purposes of this section, “direct health care” and “direct health care related-services” shall have the same meaning as these terms are defined in §68-11-1004(a).

(c) The employing entity shall require each employing entity to conduct a background check before hiring or contracting with an individual who will provide direct health care or direct health care-related services to an individual who is in the care of the employing entity or receiving direct health care or direct health care-related services from the employing entity.

(d) A background check shall include the following:

(1)

(A) A criminal background investigation by the Tennessee bureau of investigation and/or the federal bureau of investigations; or

(B) A criminal background investigation by a professional background screening organization or criminal background check service or registry;

(2) Verification that the person's name does not appear on the abuse registry maintained by the department of health pursuant to title 68, chapter 11, part 10;

(3) Verification that the person's name does not appear on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(4) Licensure verification through the department of health, if applicable.

(e) Any individual, contractor or unsupervised volunteer who will provide direct health care or direct health care-related services to an individual who is in the care of or receiving direct health care or direct health care-related services from the employing entity, shall consent to the following:

(1) Provide past work history and work references for the previous five (5) years, and at least three (3) personal references.

(2) Agree to the release and use of any information necessary to the employing entity for the purpose of verifying whether the person has been convicted of a criminal offense or has been subject to any employment disciplinary action.

(3)

(A) Submit to a state and federal criminal history records check to be conducted by the Tennessee bureau of investigation



and the federal bureau of investigation, or any other law enforcement agency; or

(B) Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

(f) Each employing entity shall document in its personnel files, or in a separate confidential background check file, that it has completed the background checks required by this section.

(g) An employing entity shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, contractor or volunteer status except as required or permitted by state or federal law.

(h) The employing entity shall pay the costs for conducting any background check required by this section, including any cost incurred by the Tennessee bureau of investigation, the federal bureau of investigation, the professional background screening organization, law enforcement agency, or other legally authorized entity. Payment of the costs to the Tennessee bureau of investigation shall be made in accordance with §§ 38-6-103 and 38-6-109. Nothing in this subsection shall be construed to prohibit the organization from requiring the person who is seeking to be an employee, contractor, or unsupervised volunteer from paying such costs to the organization.

(i) Except as provided in subsection (j), any of the following shall disqualify a person from being an employee, contractor or unsupervised volunteer and providing direct health care or direct health care-related services to an individual who is receiving direct health care or direct health-care related services from the employing entity:

(1) Conviction of any criminal felony offense, or the pleading of *nolo contendere* to any criminal felony offense;

(2) Conviction of, or the pleading of *nolo contendere* to, any offenses not delineated in subsection (i)(1) relating to theft or the misappropriation or exploitation of property, or the physical or sexual abuse, intimidation, harassment, stalking or neglect of a person.

(3) The identification of the person on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The identification of the person on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Failure of the person to have the required license, if applicable;  
or

(6) The refusal to cooperate with a background check.

(j) If a person has any of the disqualifiers listed in subdivisions (i)(1)-(4), the person may, at the discretion of the employing entity, serve as an employee, contractor or unsupervised volunteer, unless any of the following apply:

(1) The conviction or pleading of *nolo contendere* is an intentional or knowing criminal felony offense against a person or property;

(2) The offense is related to the physical, sexual, or emotional abuse or theft or misappropriation of the property of a vulnerable person as defined in § 68-11-1004;

(3) The person is listed on the department of health's abuse registry pursuant to title 68, chapter 11, part 10;

(4) The person is listed on the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2;

(5) Any offense as delineated in subdivision (i)(1) or (2) occurred within the past three years; or

(6) More than one offense as delineated in subdivision (i)(1) or (2) occurred within the past seven (7) years.

(k) Except as provided in subsection (j), if a person has any of the disqualifiers listed in subsection (i), an employing agency shall terminate the employment of or terminate the contract with such person if the person provides direct health care or direct health care-related services to an individual.

(l) The bureau of TennCare shall monitor employing agencies through review processes to determine whether employing entities are complying with the requirements of this section.

(m) An employing entity that declines to employ or terminates a person based upon background information provided to the employing entity under this section shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

(n) Any employing entity that fails to complete background checks or otherwise comply with the requirements of this section shall be subject to a civil monetary penalty for each violation in an amount ranging from two hundred fifty dollars (\$250) for an initial violation up to a maximum of two thousand five hundred (\$2,500) for repeat violations. In no event will an employing entity be required to pay more than one civil penalty for a single violation.

(o) The bureau of TennCare or employing entity may terminate or not enter or renew a contract with an employing entity that fails to comply with the requirements of this section.

(p) The bureau of TennCare may promulgate public necessity rules to effectuate the purposes of this act in accordance with the provisions of the Uniform Administrative Procedures Act compiled at Title 4, Chapter 5.

SECTION 22. Tennessee Code Annotated, Section 34-7-101, is deleted in its entirety and substituted instead with the following language:

34-7-101. This chapter shall be known and may be cited as the “Public Guardianship for the Elderly Law.”

SECTION 23. Tennessee Code Annotated, Section 34-7-102, is deleted in its entirety and substituted instead with the following language:

34-7-102.

(a) The general assembly recognizes that many elderly persons in the state are unable to meet essential requirements for their physical and behavioral health or to manage essential aspects of their financial resources. The general assembly finds that private conservatorship is inadequate where there are no willing and responsible family members or friends to serve as conservator and where the elderly or disabled person does not have adequate resources for the compensation of a private conservator, or to pay legal and court costs. The general assembly intends through this chapter to establish a statewide public conservatorship program to aid elderly and disabled persons who are sixty (60) years of age or older who have no family member or friend who is willing and able to serve as conservator, with particular attention to vulnerable persons referred for public guardianship assistance by adult protective services.

(b) The general assembly intends to promote the general welfare by establishing a public guardianship system that permits the elderly and disabled to determinatively participate as fully as possible in all decisions that affect them, that assists such persons to regain or develop their capacities to the maximum extent possible, and that accomplishes such objectives through the use of the least intrusive alternatives. This chapter shall be liberally construed to accomplish these purposes. It is the intent of the general assembly that nothing contained in this chapter will affect the powers of the court under chapters 1, 2 and 3 of this title, nor create additional powers not contained in chapters 1, 2 and 3 of this title. The district public guardian shall not serve in more than one (1) capacity in any one (1) proceeding under chapters 1, 2 and 3 of this title.

SECTION 24. Tennessee Code Annotated, Section 34-7-103, is deleted in its entirety and substituted instead with the following language:

34-7-103.

(a) A statewide program to provide guardianship for the elderly is created and will be administered by the commission on aging, which shall adopt policies and may promulgate rules to govern the operation of district public guardians within each development district, and implement the law. The commission shall provide a coordinator to monitor program development and operation, and shall contract with the grantee agencies in each of the nine (9) development districts which are the planning and service areas designated by the commission. Each grantee agency in the nine (9) development districts shall hire staff to serve as district public guardian in the planning and service area.

(b) The state of Tennessee recognizes the Code of Ethics for Guardians adopted by the National Guardianship Association and adopts these guiding principles as the foundation for the statewide guardianship program.

SECTION 25. Tennessee Code Annotated, Section 34-7-104, is deleted in its entirety and substituted instead with the following language:

34-7-104.

(a) The duties and powers of the district public guardian are as follows:

(1) To serve as conservator for elderly and disabled persons who have no family members or other person, bank or corporation willing and able to serve as conservator;

(2) The district public guardian does not have any power or authority beyond that set forth for a conservator in chapters 1, 2 and 3 of this title; and

(3) To provide for the least intrusive alternatives, the district public guardian may accept power of attorney.

(b) The district public guardian may employ sufficient staff to carry out the duties of the office. The district public guardian shall ensure that a background check, as specified in §71-2-111, is conducted for all staff, contractors and volunteers. Any person with a disqualifier as described in 71-2-111(l) is ineligible to serve as a guardian or volunteer.

(c) Within fifteen (15) months of employment as a public guardian shall file an application to become certified by the National Guardianship Association. Within two years of employment as a guardian, each public guardian shall complete all requirements and register as a certified public guardian. All current public guardians must complete certification and register within fifteen (15) months of the effective date of this legislation.

(d) The district public guardian may delegate to staff members the powers and duties of the office of district public guardian except as otherwise limited by law. The district public guardian retains ultimate responsibility for the discharge of required duties and responsibilities.

(e)

(1) A district public guardian may accept the services of volunteer persons and organizations, and raise money to supplement operating costs.

(2) The commission on aging and disability, in consultation with the departments of human services and health, may develop and implement a statewide program to recruit, train, assign, supervise and evaluate volunteer persons to assist district public guardians in maintaining the independence and dignity of their elderly wards. In developing and implementing this statewide program, the commission on aging shall solicit input and resources from interested organizations, including, but not necessarily limited to, community senior citizen centers, churches and synagogues having senior projects and programs under the

auspices of the American Association of Retired Persons (AARP). Each volunteer shall possess demonstrated personal characteristics of honesty, integrity, compassion and caring for the elderly. The background of each volunteer shall be subject to appropriate inquiry and investigation. Volunteers shall receive no salary but may be reimbursed by the commission on aging and disability for travel and other expenses incurred directly as a result of the performance of volunteer services.

(f) If the disabled person qualifies for SSI benefits, no charge will be made against the disabled person's estate for court costs or fees of any kind. Under no circumstances may court costs be assessed to the public guardianship program.

(g) If the disabled person does not qualify for SSI benefits, costs and compensation of the district public guardian shall be determined under §§ 34-1-112 and 34-1-114.

(h)

(1) All funds received on behalf of a disabled person by the district public guardianship program shall be handled under a computerized accounting package approved by the commission on aging and disability, and shall be audited annually by the state.

(2) All other assets received by the district public guardian shall be handled in accordance with state laws, rules and court regulation or regulations as to disposition of property and record keeping.

(3) Upon termination of the conservatorship, all assets remaining in the estate shall be paid over to the disabled person or to the disabled person's legal representative.

(i) While performing conservatorship duties, the district public conservator shall continue to seek a family member, friend, other person, bank or corporation qualified and willing to serve as conservator. If such an individual, bank or

corporation is located, the district public conservator shall submit a motion to the court for appointment of the qualified and willing successor conservator.

(j) A person appointed successor district public guardian immediately succeeds to all rights, duties, responsibilities and powers of the preceding district public guardian.

(k) When the position of district public guardian is vacant, subordinate personnel employed under subsection (c) shall continue to act as if the position of district public guardian were filled.

(l) A district public guardian shall be required to post bond in individual cases in accordance with § 34-1-105. The commission on aging and disability shall arrange out of the program budget to purchase a statewide bond that shall ensure the fiduciary responsibilities of the district public guardian in all court appointed cases for indigent wards.

(m) The district public guardian shall adhere to all state laws that are applicable to conservatorship.

(n) To ensure the capacity to respond to each wards needs and ensure all medical, behavioral and support service needs are met for each ward, the district public guardian shall submit certification to the court when maximum caseload has been attained, and the court shall not assign additional wards while maximum caseload is maintained. Maximum caseload shall be certified by the commission on aging and disability's program coordinator and supervisory staff upon review of verifying documentation submitted by the district public guardian and the grantee agency director. A caseload cap shall be reviewed every thirty (30) days to determine the necessity of continuing the cap. The district public guardian must notify the court and the commission on aging and disability program coordinator when caseloads have been reduced to less than maximum load.

(o)



(1) The public guardian shall keep and maintain proper financial and service delivery records on all matters in which the public guardian serves as guardian.

(2) The public guardian shall file with the court an Initial Guardianship Plan for each ward that includes provisions for needed medical, behavioral and support services and type of residential setting best suited for the welfare of the ward, based on his or her abilities, needs and resources. The Initial Guardianship Plan shall be filed with the court within sixty (60) days after guardianship is appointed by the court.

(3) The public guardian shall file with the court an annual report for each ward that includes the current location of the ward, the ward's condition, the ward's medical, behavioral and support services needs, whether there are any changes expected in the upcoming year, and the ward's ability to be restored to capacity.

(4) The commission on aging and disability shall conduct an annual review of a random sample of records to verify that Initial Guardianship Plans and annual reports have been completed and properly filed with the court and an annual review of a random sample of public guardian and volunteer records to ensure written verification of appropriate background checks and certification is present. The Tennessee commission on aging and disability's executive director shall provide a written report of the annual reviews to the select oversight committee on long-term care.

(p) A public guardian shall ensure that each of the guardian's wards is personally visited by a district public guardian staff or program volunteer per month.

SECTION 26. Tennessee Code Annotated, Section 34-7-105, is deleted in its entirety and substituted instead with the following language:

34-7-105. Costs of public guardianship for the elderly and disabled will be met by annual appropriation to the commission on aging and disability.

SECTION 27. This act shall take effect on January 1, 2010, the public welfare requiring it. For purposes of rulemaking authority, this act shall take effect upon becoming law, the public welfare requiring it.